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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/321,809	05/28/1999	RICHARD L. FRANK	ORA99-07(OID	7075

21005 7590 09/13/2005

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EXAMINER	
TANG, KENNETH	

ART UNIT	PAPER NUMBER
2195	

DATE MAILED: 09/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/321,809	FRANK ET AL.	
	Examiner	Art Unit	
	Kenneth Tang	2195	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 July 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3,8,10,15,17,22 and 24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3,8,10,15,17,22 and 24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This action is in response to the Amendment filed on 7/1/05. Applicant's arguments have been fully considered but are now moot in view of the new grounds of rejections.

2. Claims 1, 3, 8, 10, 15, 17, 22, and 24 are considered for examination.

Claim Objections

3. Claims 15 and 22 are objected to because of the following informalities:

a. In claim 15, there is irregular spacing between "the" and "donor" on line 6.

b. In claim 22, "computer process;." should be changed to "the computer process."

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1, 3, 8, 10, 15, and 17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In claims 1, 8, and 15, the limitation "wherein the memory allocated to the donor process is not owned by the donor process" does not comply with the written description

requirement. On page 8, lines 23-24 of the Specification, it states "a donor process 208 includes one or more software routines resident in memory".

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1, 3, 8, 10, 15, and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention:

a. In claims 1, 8, and 15, the limitation "wherein the memory allocated to the donor process is not owned by the donor process" is indefinite because it is not understood nor made clear in the claim language how a memory allocated to the donor process is not owned by the donor process. There lacks written support in the Specification for this limitation.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claim 22 is rejected under 35 U.S.C. 102(e) as being anticipated by Wagner (US 5,940,868).

3. As to claim 22, Wagner teaches an apparatus for allocating to a process in a computer (memory allocation method and apparatus) *(see Title)* comprising:

means for, creating a plurality of processes, each process being allocated an amount of memory, the processing including one consumer process (request to access resource) *(col. 3, lines 40-51 and col. 4, lines 1-7)* and donor process (software routines) *(col. 1, lines 5-44, col. 3, lines 40-51 and col. 4, lines 1-7)*; and

means for, pooling (aggregating) the allocated memory for the processes together for use by consumer process *(col. 1, lines 59-67, claim 11)*.

4. It is noted that the broadest reasonable interpretation of a consumer process is merely a process that requests to access a resource. The broadest reasonable interpretation of a donor process is merely a process that includes one or more software routines. The Applicant's Specification does not contradict this.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1, 3, 8, 10, 15, 17, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner (US 5,940,868) in view of Miyazawa (US 5,642,508).

6. As to claim 1, Wagner teaches a method for allocating memory to a process on a computer (memory allocation method and apparatus) *(see Title)*, the method comprising:

creating a plurality of processes (creating a multiplicity of processes) *(col. 1, lines 59-65)*, each process being allocated a respective amount of memory, the processes including one consumer process (request to access resource) *(col. 3, lines 40-51 and col. 4, lines 1-7)* and a donor process (software routines) *(col. 1, lines 5-44, col. 3, lines 40-51 and col. 4, lines 1-7)*; and

pooling (aggregating) the allocated memory for the processes together for use by the consumer process *(col. 1, lines 59-67, claim 11)*.

7. It is noted that the broadest reasonable interpretation of a consumer process is merely a process that requests to access a resource. The broadest reasonable interpretation of a donor process is merely a process that includes one or more software routines. The Applicant's Specification does not contradict this.

8. Wagner fails to explicitly teach wherein the memory allocated to the donor process is not owned by the donor process. However, Miyazawa teaches a consumer process (requesting access to a resource) and a donor process (containing software routine(s)) with a control managing section which manages process to be allocated, wherein the memory allocated to the donor process is not owned by the donor process (but rather by the control managing section) *(col. 4, lines 30-60, col. 6, lines 1-9)*. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the feature of a consumer process (requesting

access to a resource) and a donor process (containing software routine(s)) with a control managing section which manages process to be allocated, wherein the memory allocated to the donor process is not owned by the donor process (but rather by the control managing section) to the existing allocation processing system of Wagner because this would increase the control of the system by having a way to manage the resources of the system *(col. 4, lines 30-60, col. 6, lines 1-9)*.

9. As to claim 3, Wagner teaches wherein the processes include one consumer process (request to access resource) *(col. 3, lines 40-51 and col. 4, lines 1-7)* and at least one donor process (software routines resident in memory such as system kernel code and application user code) the number of donor processes determined from the amount of allocated memory *(col. 1, lines 5-44, col. 3, lines 40-51 and col. 4, lines 1-7)*.

10. As to claim 8, it is rejected for the same reasons as stated in the rejection of claim 1.

11. As to claim 10, it is rejected for the same reasons as stated in the rejection of claim 3.

12. As to claim 15, it is rejected for the same reasons as stated in the rejection of claim 1. In addition, it is inherent that the computer system has a central processing unit (CPU).

13. As to claim 17, it is rejected for the same reasons as stated in the rejection of claim 3.

14. As to claim 24, it is rejected for the same reasons as stated in the rejection of claims 1 and 3

Response to Arguments

15. During patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification." *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969).

16. Applicant's arguments have been fully considered but are now moot in view of the new grounds of rejections.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Tang whose telephone number is (571) 272-3772. The examiner can normally be reached on 8:30AM - 6:00PM, Every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kt
9/7/05

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